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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,540	11/05/2003	Timothy J. Mousley	PHB 34,266C	8237
24737	7590	09/07/2004	EXAMINER	
PHILIPS INTELLECTUAL PROPERTY & STANDARDS			TORRES, JOSEPH D	
P.O. BOX 3001			ART UNIT	PAPER NUMBER
BRIARCLIFF MANOR, NY 10510			2133	

DATE MAILED: 09/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/701,540	MOULSLEY, TIMOTHY J.	
Examiner	<b>Art Unit</b>		
Joseph D. Torres	2133		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 05 November 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1,3,4 and 11-28 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,3,4 and 11-28 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 05 November 2003 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. 09/348,958.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) ✓      4)  Interview Summary (PTO-413)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      Paper No(s)/Mail Date. \_\_\_\_\_.  
3)  Information Disclosure Statement(s), (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/05/2003.      5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: '44c' & '44d' in Figure 2D. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

2. Claim 11 is objected to because of the following informalities: "is selects" in line 3 is improper and grammatically incorrect. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 3, 4 and 11-28 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 20, 27 and 28 recite, "bit deletion/repetition rate", which is indefinite since it is not clear what is meant by "deletion/repetition". The examiner is assuming that the Applicant intended --bit deletion or repetition rate--.

Claims 1, 20, 27 and 28 recite, "bit deletion/repetition pattern", which is indefinite since it is not clear what is meant by "deletion/repetition". The examiner is assuming that the Applicant intended --bit deletion or repetition pattern--.

Claims 1, 20, 27 and 28 recite, "wherein a bit deletion/repetition pattern is selected to ensure that the deleted or repeated bits are not required to enable all bits from the digital input to be reconstructed". The limitation is indefinite since it is not tied to nor does it impose any structural limitation and only attempts to recite the purpose for bit insertion or deletion in the negative. The Examiner asserts that any bit insertion device is inherently capable of producing sufficient redundant bits so that not all of them are required; hence it is unclear precisely what the Applicant is attempting to claim.

The term "offset with respect to" in claim 3 is a relative term which renders the claim indefinite. The term "offset with respect to" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The

Examiner asserts that the term "offset with respect to" is ambiguous since it does not specify a relative location form which to determine the degree of offset.

Claim 14 recites the limitation "change bits" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. Claim 14 recites the limitation "change bits" in line 2. The omitted structural cooperative relationships are: the relationship between "change bits" and the limitations in claim 1.

Claim 15 recites the limitation, "said coding circuit has one of a fixed code rate and a predetermined number of rates for a variable data source." It is not clear how a coding circuit can have a fixed rate and a variable rate at the same time.

Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. Claim 15 recites the limitation, "said coding circuit has one of a fixed code rate and a predetermined number of rates for a variable data source." The omitted

structural cooperative relationships are: the relationship between "said coding circuit", "a fixed code rate" and "a predetermined number of rates for a variable data source".

Claim 18 recites the limitation, "said coding circuit has one of a fixed code rate and a predetermined number of rates for a variable data source." It is not clear how a coding circuit can have a fixed rate and a variable rate at the same time.

Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. Claim 18 recites the limitation, "said coding circuit has one of a fixed code rate and a predetermined number of rates for a variable data source." The omitted structural cooperative relationships are: the relationship between "said coding circuit", "a fixed code rate" and "a predetermined number of rates for a variable data source".

Claim 21 recites the limitation "change bits" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. Claim 21 recites the limitation "change bits" in line 2. The omitted structural

cooperative relationships are: the relationship between “change bits” and the limitations in claim 20.

Claim 22 recites the limitation, “said coding circuit has one of a fixed code rate and a predetermined number of rates for a variable data source.” It is not clear how a coding circuit can have a fixed rate and a variable rate at the same time.

Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. Claim 22 recites the limitation, “said coding circuit has one of a fixed code rate and a predetermined number of rates for a variable data source.” The omitted structural cooperative relationships are: the relationship between “said coding circuit”, “a fixed code rate” and “a predetermined number of rates for a variable data source”.

Claim 25 recites the limitation, “said coding circuit has one of a fixed code rate and a predetermined number of rates for a variable data source.” It is not clear how a coding circuit can have a fixed rate and a variable rate at the same time.

Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP

§ 2172.01. Claim 25 recites the limitation, “said coding circuit has one of a fixed code rate and a predetermined number of rates for a variable data source.” The omitted structural cooperative relationships are: the relationship between “said coding circuit”, “a fixed code rate” and “a predetermined number of rates for a variable data source”.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 4, 11 and 14-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Okumura et al. (Okumura, Y.; Adachi, F.; Variable rate transmission and blind rate detection for coherent DS-CDMA mobile radio, *Electronics Letters*, Volume: 33, Issue: 24, 20 Nov. 1997, Pages: 2026 - 2027) [hereafter referred to as Okumura].

35 U.S.C. 102(b) rejection of claims 1, 20, 27 and 28.

Okumura teaches a plurality of interleaved words generated by the action of an interleaving circuit on a coded output generated by the action of a coding circuit on a digital input (the *VRD transmission and blind rate detection scheme* section of Column 2 on page 2026 of Okumura teaches a sequence is convolutionally coded and then bit interleaved using a  $2N_{\text{slot}} \times K$  interleaver; Note: the rows in the  $2N_{\text{slot}} \times K$  interleaver are words), the coded output having a greater number of bits than the digital input

(convolutional codes inherently have a greater number of bits than the digital input since the convolutional code includes redundant bits), the rate matching circuit having means for adjusting the number of bits in the data block using a rate matching pattern to provide data bits for transmission during respective frames of a transmission channel (the first line in column 1 on page 2027 of Okumura teaches that the Repetition coder in Figures 1-3 in Okumura is a rate matching circuit having means for adjusting the number of bits in the data block using a rate matching pattern to provide data bits for transmission during respective frames of a transmission channel), and means for selecting the rate matching pattern depending on a bit deletion or repetition rate, wherein a bit deletion or repetition pattern is selected to ensure that the deleted or repeated bits are not required to enable all bits from the digital input to be reconstructed (the Repetition coder in Figure 1 in Okumura is a means for selecting the rate matching pattern depending on a repetition rate, wherein a repetition pattern is selected to ensure that the repeated bits are not required to enable all bits from the digital input to be reconstructed; Note: the repetition bits are inserted for the purposes of rate matching and not for error correction so that the repeated bits are not necessarily required to enable all bits from the digital input to be reconstructed).

Note: Figure 1 on page 2026 of Okumura comprises a transmitter for use in a communication system, the transmitter comprising a digital input, a convolutional coding device for generating data bits for transmission, and means for transmitting the data bits during respective frames of a transmission channel, wherein the coding device comprises a coding circuit for generating a coded output having a greater number of bits

than the digital input, an interleaving circuit for operating on the coded output to generate a data block comprising a plurality of interleaved words (the *VRD transmission and blind rate detection scheme* section of Column 2 on page 2026 of Okumura teaches a sequence is convolutionally coded and then bit interleaved using a  $2N_{slot} \times K$  interleaver; Note: the rows in the  $2N_{slot} \times K$  interleaver are words).

Note also: Note: Figure 1 on page 2026 of Okumura comprises receiver for use in a communication system, the receiver comprising means for receiving a coded digital signal comprising a received convolutionally coded and interleaved data block comprising a plurality of interleaved words, the data block having been processed by a coding device to adjust the number of bits in the data block according to a rate matching pattern, the receiver further comprising a data reconstruction circuit having means for adjusting the number of bits in the data block to reverse the action of the coding device, thereby reconstructing the interleaved words (see Repetition Decoder in Figure 1 on page 2026 of Okumura), a de-interleaving circuit having means for generating each of the plurality of interleaved words, a channel decoder, and means for selecting the rate matching pattern as a function of a bit deletion/repetition rate (see De-interleaver & Viterbi Decoder in Figure 1 on page 2026 of Okumura).

35 U.S.C. 102(b) rejection of claim 3.

The first paragraph in column 1 on page 2027 of Okumura teaches the use of spreading codes for distributing the repetition bits, which encompasses and is inherently capable of producing any offset for position repetition bits in a transmitted sequence of digital

data. See *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971) and *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

35 U.S.C. 102(b) rejection of claim 4.

Figure 2 of Okumura teaches that the frame structure is determined by the slot length of the interleaver.

35 U.S.C. 102(b) rejection of claim 11.

Note: the data rate of a convolutional coder is a function of the constraint length of the convolutional coder, and the final rate of the transmitter of Figure 1 on page 2026 of Okumura is a function of the data rate of a convolutional coder; hence is also a function of the constraint length of the convolutional coder.

35 U.S.C. 102(b) rejection of claim 14.

(1 –1) is a 1x2 matrix and is a building block for any repetition pattern for the transmitter in Figure 1 of Okumura. Note: any repletion pattern built from the (1 –1) is a 1x2 matrix building block can inherently be represented in matrix form.

35 U.S.C. 102(b) rejection of claim 15.

The convolutional encoder in Okumura encompasses fixed rate encoders.

35 U.S.C. 102(b) rejection of claims 16 and 17.

The Interelaver in Okumura is not adaptive and any interleaver inherently has a constant bit rate.

35 U.S.C. 102(b) rejection of claim 18.

The convolutional encoder in Okumura encompasses fixed rate encoders. The Interelaver in Okumura is not adaptive and any interleaver inherently has a constant bit rate.

35 U.S.C. 102(b) rejection of claim 19.

The purpose of rate matching is to alter a data rate.

35 U.S.C. 102(b) rejection of claim 21.

(1 –1) is a 1x2 matrix and is a building block for any repetition pattern for the transmitter in Figure 1 of Okumura. Note: any repletion pattern built from the (1 –1) is a 1x2 matrix building block can inherently be represented in matrix form.

35 U.S.C. 102(b) rejection of claim 22.

The convolutional encoder in Okumura encompasses fixed rate encoders.

35 U.S.C. 102(b) rejection of claims 23 and 24.

The Interelaver in Okumura is not adaptive and any interleaver inherently has a constant bit rate.

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35 U.S.C. 102(b) rejection of claim 25.

The convolutional encoder in Okumura encompasses fixed rate encoders. The Interelaver in Okumura is not adaptive and any interleaver inherently has a constant bit rate.

35 U.S.C. 102(b) rejection of claim 26.

The purpose of rate matching is to alter a data rate.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Okumura et al. (Okumura, Y.; Adachi, F.; Variable rate transmission and blind rate

detection for coherent DS-CDMA mobile radio, Electronics Letters, Volume: 33, Issue: 24, 20 Nov. 1997, Pages: 2026 - 2027) in view of Yoshida; Makoto (US 5729526 A).

35 U.S.C. 103(a) rejection of claim 12.

Okumura substantially teaches the claimed invention described in claims 1, 3 and 4 (as rejected above).

However Okumura does not explicitly teach the specific use of additional coding devices with a multiplexer for combining the output of the coding devices.

Yoshida, in an analogous art, teaches use of additional coding devices with a multiplexer for combining the output of the coding devices (Figure 10 in Yoshida is a transmitter with additional coding devices 11 in Figures 1 & 11 with a multiplexer 73 for combining the output of the coding devices 11).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Okumura with the teachings of Yoshida by including use of additional coding devices with a multiplexer for combining the output of the coding devices. This modification would have been obvious to one of ordinary skill in the art, at the time the invention was made, because one of ordinary skill in the art would have recognized that use of additional coding devices with a multiplexer for combining the output of the coding devices would have provided the opportunity for transmitting ATM compliant data.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Okumura et al. (Okumura, Y.; Adachi, F.; Variable rate transmission and blind rate detection for coherent DS-CDMA mobile radio, Electronics Letters, Volume: 33, Issue: 24, 20 Nov. 1997, Pages: 2026 - 2027) and Yoshida; Makoto (US 5729526 A) in view of Sinha; Deepen et al. (US 6405338 B1, hereafter referred to as Sinha).

35 U.S.C. 103(a) rejection of claim 13.

Okumura and Yoshida substantially teaches the claimed invention described in claims 1, 3, 4 and 12 (as rejected above).

However Okumura and Yoshida do not explicitly teach the specific use of different data rates for the different coding devices.

Sinha, in an analogous art, teaches different data rates for the different coding devices. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Okumura and Yoshida with the teachings of Sinha by including use of different data rates for the different coding devices. This modification would have been obvious to one of ordinary skill in the art, at the time the invention was made, because one of ordinary skill in the art would have recognized that use of different data rates for the different coding devices would have provided the opportunity to match error protection to different classes of data (see Figure 2 in Sinha).

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1, 3, 4 and 11-28 are rejected under the judicially created doctrine of double patenting over claims 1-19 of U. S. Patent No. US 6671851 B1 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent. The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: Claim 1 of U. S. Patent No. US 6671851 B1 recites "A rate matching circuit for adjusting the number of bits in a data block, the data block comprising a plurality of interleaved words generated by the action of an interleaving circuit on a coded output generated by the action of a coding circuit on a digital input, the coded output having a greater number of bits than the digital input, the rate matching circuit having means for adjusting the number of bits in the data block using a rate matching pattern to provide data bits for transmission during respective frames of a transmission channel, and means for selecting the rate matching pattern as a function of an interleaving depth, a bit deletion/repetition rate and said digital input, wherein a bit

deletion/repetition pattern is selected to ensure that the deleted or repeated bits are not required to enable all bits from the digital input to be reconstructed.”.

Claim 1 of the current application adds the language, “selecting the rate matching pattern depending on a bit deletion/repetition rate” [only the highlighted language is added]. Since a rate matching pattern inherently depends bit deletion/repetition rate, the added language does not further limit claim 1, hence claim 1 of the current application is an inherently obvious subset of the limitations in claim 1 of U. S. Patent No. US 6671851 B1.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Roobol; Christiaan et al. (US 6307867 B1) teaches a transmission rate specified in a transmission format along with other parameters such as coding information, interleaving information, and repetition/puncturing schemes for rate matching.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Torres whose telephone number is (703) 308-7066. The examiner can normally be reached on M-F 8-5. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decay can be reached on (703) 305-9595. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Joseph D. Torres, PhD  
Art Unit 2133